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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 6th August, 1984:—

BILL No. 63 OF 1984

A Bill further to amend the Land Acquisition Act, 1894.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic
of India as follows:—

1. This Act may be called the Land Acquisition (Amendment) Act, 1984. Short
title.

1 of 1894.

2. In sub-section (2) of section 1 of the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act), for the words, figures and letters "the territories which, immediately before the 1st November, 1956, were comprised in Part B States; and", the words "the State of Jammu and Kashmir." shall be substituted. Amend-
ment of
section

3. In section 3 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, Amend-
ment of
section 3.
namely:—

“(aa) the expression “local authority” includes a town plan-
ning authority (by whatever name called) set up under any law
for the time being in force;”;

(b) after clause (c) the following clause shall be inserted, namely:—

'(cc) the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956, a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;';

1 of 1956.
21 of 1860.

(c) for clause (e), the following clause shall be substituted, namely:—

'(e) the expression "Company" means—

(i) a company as defined in section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);

1 of 1956

(ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

21 of 1860.

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc);

(d) for clause (f), the following clause shall be substituted, namely:—

'(f) the expression "public purpose" includes—

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored

21 of 1860

by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vi) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(vii) the provision of any premises or building for locating a public office,

but does not include acquisition of land for Companies;'

14 of 1882.

(e) in clause (g), in the proviso, in clause (iii), for the words and figures "Chapter XXXI of the Code of Civil Procedure", the words and figures "Order XXXII of the First Schedule to the Code of Civil Procedure, 1908" shall be substituted.

5 of 1908.

4. In sub-section (1) of section 4 of the principal Act,—

(a) after the words "any public purpose", the words "or for a Company" shall be inserted;

Amendment of section 4.

(b) after the words "Official Gazette", the words "and in two daily newspapers circulating in that locality of which at least one shall be in the regional language" shall be inserted;

(c) after the words "in the said locality", the brackets and words "(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)" shall be inserted.

5. In section 5A of the principal Act,—

(a) in sub-section (1), for the words "within thirty days after the issue of the notification", the words "within thirty days from the date of the publication of the notification" shall be substituted;

Amendment of section 5A.

(b) in sub-section (2), for the words "either in person", the words "in person or by any person authorised by him in this behalf" shall be substituted.

6. In section 6 of the principal Act,—

(a) in sub-section (1),—

(1) for the first proviso, the following proviso shall be substituted, namely:—

"Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),—

Amendment of section 6

1 of 1967.

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.”;

(2) the following *Explanations* shall be inserted at the end, namely:—

Explanation 1.—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.—Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.”;

(b) in sub-section (2), for the words “, and shall state”, the words and brackets “and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state” shall be substituted.

Amend-
ment of
section 9.

7. In section 9 of the principal Act, in sub-section (4), for the words and figures “registered under Part III of the Indian Post Office Act, 1866” the words and figures “registered under sections 28 and 29 of the Indian Post Office Act, 1898” shall be substituted.

14 of 1866.

6 of 1898.

Amend-
ment of
section
11.

8. Section 11 of the principal Act shall be re-numbered as sub-section (1) of that section, and,—

(a) in sub-section (1) as so re-numbered, the following provisos shall be inserted at the end, namely:—

“Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.”;

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules

made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

16 of 1908.

(4) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act."

9. After section 11 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
11A.

"11A. The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Period
within
which an
award
shall be
made.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement."

10. After section 13 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
13A.

"13A. (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 13 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Correction
of clerical
errors, etc.

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue."

14 of 1982.
5 of 1908.

11 In section 14 of the principal Act, for the words "Code of Civil Procedure", the words and figures "Code of Civil Procedure, 1908" shall be substituted.

Amend-
ment of
section 14

Insertion
of new
section
15A.

12. After section 15 of the principal Act, the following section shall be inserted, namely:—

Power to
call for
records,
etc.

“15A. The appropriate Government may at any time before the award is made by the Collector under section 11 call for any record of any proceedings (whether by way of enquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.”.

Amend-
ment of
section
17.

13. In section 17 of the principal Act,—

(a) in sub-section (1), for the words “take possession of any waste or arable land needed for public purposes or for a Company”, the words “take possession of any land needed for a public purpose” shall be substituted;

(b) in sub-section (2), after the words “access to any such station,”, the words “or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,” shall be inserted;

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.”;

(d) in sub-section (4), for the words "after the publication of the notification", the words "after the date of the publication of the notification" shall be substituted.

14. In section 19 of the principal Act, in sub-section (1),—

Amend-
ment of
section 19.

(a) in clause (c), the word "and" occurring at the end shall be omitted;

(b) after clause (c), the following clause shall be inserted, namely:—

"(cc) the amount paid or deposited under sub-section (3A) of section 17; and".

15. In sub-section (2) of section 23 of the principal Act, for the words "fifteen per centum", the words "thirty per centum" shall be substituted.

Amend-
ment of
section 23.

16. In section 24 of the principal Act,—

Amend-
ment of
section 24.

(a) in clause *sixthly*, the word "or" occurring at the end shall be omitted;

(b) in clause *seventhly*, the word "or" shall be inserted at the end, and after the clause as so amended, the following clause shall be inserted, namely:—

"*eighthly*, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy."

17. For section 25 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution of
new sec-
tion for
section 25.

"25. The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11."

Amount of
compen-
sation
by Court
not to be
lower
than the
amount
awarded
by the
collector.

18. In section 28 of the principal Act,—

Amend-
ment of
section
28.

(a) for the words "six per centum", the words "nine per centum" shall be substituted;

(b) the following proviso shall be inserted at the end, namely:—

"Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is

taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

Insertion
of new
section
28A.

19. In Part III of the principal Act, after section 28, the following section shall be inserted, namely:—

Re-deter-
mination
of the
amount of
compen-
sation on
the basis
of the
award of
the Court.

“28A. (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.”.

Amend-
ment of
section
34.

20. In section 34 of the principal Act,—

(a) for the words “six per centum”, the words “nine per centum” shall be substituted,

(b) the following proviso shall be inserted at the end, namely:—

“Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation part thereof which has not been paid or deposited before the date of such expiry.”.

	21. Section 38 of the principal Act shall be omitted.	Omission of section 38.
	22. In section 38A of the principal Act, for the words, figures and letter "sections 5A, 6, 7, 17 and 50", the words, figures and letter "sections 4, 5A, 6, 7 and 50" shall be substituted.	Amendment of section 38A.
	23. In section 39 of the principal Act,— (a) for the words, figures and brackets "sections 6 to 37 (both inclusive)", the words, figures and brackets "sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive)" shall be substituted; (b) after the words "for any Company", the words "under this Part" shall be inserted.	Amendment of section 39.
14 of 1882. 5 of 1908.	24. In section 40 of the principal Act, in sub-section (3), for the words "Code of Civil Procedure", the words and figures "Code of Civil Procedure, 1908" shall be substituted.	Amendment of section 40.
14 of 1866. 6 of 1898.	25. In sub-section (3) of section 45 of the principal Act, in the proviso, for the words and figures "registered under Part III of the Indian Post Office Act, 1866", the words and figures "registered under sections 28 and 29 of the Indian Post Office Act, 1898" shall be substituted.	Amendment of section 45.
	26. In section 46 of the principal Act, for the words "fifty rupees", the words "five hundred rupees" shall be substituted.	Amendment of section 46.
	27. After section 51 of the principal Act, the following section shall be inserted, namely:— "51A. In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908, including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."	Insertion of new section 51A.
16 of 1908.		Acceptance of certified copy as evidence.
14 of 1882. 5 of 1908.	28. In section 53 of the principal Act, for the words "Code of Civil Procedure", the words and figures "Code of Civil Procedure, 1908" shall be substituted.	Amendment of section 53.
	29. In sub-section (1) of section 55 of the principal Act,— (a) in the second proviso, for the words "before the expiry of the session in which it is so laid or the successive sessions aforesaid", the words "before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted;	Amendment of section 55.

(b) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that every such rule made by the State Government shall be laid, as soon as may be after it is made, before the State Legislature.”.

Transi-
tional
provisions.

30. (1) The provisions of sub-section (2) of section 23 and section 28 of the principal Act, as amended by sections 15 and 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

(2) The provisions of section 34 of the principal Act, as amended by section 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,—

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], and the amount of compensation for such acquisition had not been paid or deposited under section 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession has been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said section 31, with effect on and from the date of taking such possession.

Payment
of
interest
of acqui-
sition of
certain
land.

31. There shall be paid, in every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], in which no award has been made by the Collector before that date, simple interest calculated at the rate of ten per centum per annum on the market value of such land as determined under section 23 of the principal Act from the date of the publication of the notification under section 4, sub-section (1), of the principal Act in respect of such land to the date of tender of payment or, as the case may be, deposit of compensation awarded by the Collector for the acquisition of such land:

Provided that no interest shall be paid for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of a Court:

Provided further that nothing in this section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the first mentioned date.

STATEMENT OF OBJECTS AND REASONS

With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.

2. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act, 1894, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill. The main proposals for amendment are as follows:—

(i) The definition of "public purpose" as contained in the Act is proposed to be so amended as to include a longer illustrative list retaining, at the same time, the inclusive character of the definition.

(ii) Acquisition of land for non-Government companies under the Act will henceforth be made in pursuance of Part VII of the Act in all cases.

(iii) A time-limit of one year is proposed to be provided for completion of all formalities between the issue of the preliminary notification under section 4 (1) of the Act and the declaration for acquisition of specified land under section 6(1) of the Act.

(iv) It is proposed to provide that the Collector shall, before making his award, obtain the previous approval of the appropriate Government or any officer of that Government authorised in this behalf. Provision has also been included to empower the Collector to make the award without any enquiry if the persons interested in

the acquisition agree in writing on the matters to be included in the award of the Collector in the form prescribed by rules made under the Act.

(v) It is proposed to provide for a period of two years from the date of publication of the declaration under section 6 of the Act within which the collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of the land would lapse. He has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.

(vi) The circumstances under which the Collector should take possession of the land before the award is made in urgent cases are being enlarged to include a larger variety of public purposes.

(vii) The appropriate Government is being empowered to call for the record of any order passed by the Collector at any time before he makes an award for the purpose of satisfying itself as to the legality or propriety of such order passed.

(viii) Solatium now payable at the rate of fifteen per centum of the market value of the land acquired in consideration of the compulsory nature of the acquisition, is proposed to be increased to thirty per centum. Similarly, the rate of interest payable on the excess compensation awarded by the Court and on the compensation in cases where possession of land is taken before payment of compensation, are also proposed to be increased substantially.

(ix) Considering that the right of reference to the civil court under section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under section 18 of the Act.

(x) As a large number of cases for the acquisition of land are pending before various authorities for a very long time and payment of the market value of the land obtaining on the date of the preliminary notification under section 4 of the Act in respect of such land is likely to be unrealistic and iniquitous, it is proposed to provide for payment of simple interest at ten per centum per annum on the amount of compensation for the period commencing from the date of issue of the notification under section 4 of the Act to the date of tender of payment or deposit of compensation awarded by the Collector in respect of all pending proceedings on the 30th April, 1982, the date when the earlier Bill for the amendment of the Act was introduced in the House of the People.

3. The Bill seeks to achieve the above objects and to make some other consequential and clarificatory amendments in the Act.

NEW DELHI;

The 21st July, 1984.

HARINATHA MISRA.

FINANCIAL MEMORANDUM

Clause 15 of the Bill seeks to amend sub-section (2) of section 23 of the Land Acquisition Act, 1984, so as to increase the rate of solatium to be given in consideration of the compulsory nature of the acquisition from 15 per centum of the market value of the land acquired to 30 per centum.

2. Clause 18 of the Bill proposes to amend section 28 of the Act to increase the rate of interest specified in that section for payment on the excess of the amount of compensation which should have been awarded by the Collector from 6 per centum to 9 per centum per annum. It is further proposed that where the delay in making payment of the balance amount exceeds one year, interest for the period in excess of one year will be paid at the rate of 15 per centum per annum.

3. Clause 19 of the Bill seeks to insert a new section 28A in the Act which provides that if a party in a land acquisition proceeding obtains the orders of the Court under section 18 of the Act for higher compensation, the other persons whose lands are covered under the same notification under section 4(1) of the Act and who may have reasons to be similarly aggrieved by the award of the Collector, may apply to the Collector for re-determination of the amount of compensation payable to them on the basis of the amount of compensation awarded by the Court.

4. Clause 20 of the Bill, which seeks to amend section 34 of the Act, proposes to increase the rate of interest which is payable on the compensation in cases where possession of land is taken before payment of the compensation or its deposit in court from 6 per centum to 9 per centum per annum. It is also proposed that where such compensation is not paid within one year of the taking of possession of the land, the rate of interest will increase to 15 per centum per annum for the period in excess of one year.

5. Clause 31 of the Bill proposes to provide for payment of interest at the rate of 10 per centum per annum on the market value of land determined under section 23 of the Act in respect of every proceeding for acquisition of land pending on the 30th April, 1982 in which no award was made before that date.

6. The above increase in the rates of payment of solatium and interest as well as payment of higher compensation on the basis of the award of the Court and interest on the amount of compensation for land for the acquisition of which proceedings were pending on the 30th April, 1982 will involve additional expenditure from the Consolidated Fund of India in cases where land is acquired for the purposes of the Union. Since such acquisition is made as and when necessary and the additional liability on account of the increase in the above rates will vary from case to case, it is not possible to estimate precisely the additional expenditure that is likely to be incurred from the Consolidated Fund of India.

7. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill seeks to insert a new sub-section (2) in section 11 of the Land Acquisition Act, 1984, to provide that if at any stage of the proceedings for the acquisition of land, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, the Collector may, without making further inquiry, make an award according to the terms of such agreement. The prescribing of a form is a matter of procedure or detail and the delegation of legislative power under this clause is therefore normal in character.

BILL NO. 66 OF 1984

A Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1 (1) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1984

Short title
and com-
mence-
ment.

(2) It shall be deemed to have come into force on the 13th day of July, 1984.

52 of 1974. 2. In the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the principal Act), for section 9, the following section shall be substituted, namely —

Substi-
tution
of new
section
for sec-
tion 9.

“9. (1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the 31st day of July, 1987, may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory

Cases in
which and
circum-
stances
under

which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Board.

Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person—

(a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or

(b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or

(c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling, and makes a declaration to that effect within five weeks of the detention of such person.

Explanation 1.—In this sub-section, “area highly vulnerable to smuggling” means—

(i) the Indian customs waters contiguous to the States of Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Goa, Daman and Diu and Pondicherry;

(ii) the inland area fifty kilometres in width from the coast of India falling within the territories of the States of Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu and the Union territories of Goa, Daman and Diu and Pondicherry;

(iii) the inland area fifty kilometres in width from the India-Pakistan border in the States of Gujarat, Jammu and Kashmir, Punjab and Rajasthan;

(iv) the customs airport of Delhi; and

(v) such further or other Indian customs waters, or inland area not exceeding one hundred kilometres in width from any other coast or border of India, or such other customs station, as the Central Government may, having regard to the vulnerability of such waters, area or customs station, as the case may be, to smuggling, by notification in the Official Gazette, specify in this behalf.

Explanation 2.—For the purposes of *Explanation 1*, “customs airport” and “customs station” shall have the same meaning as in clauses (10) and (13) of section 2 of the Customs Act, 1962, respectively.

52 of 1962.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 8 shall have effect subject to the following modifications, namely:—

(i) in clause (b), for the words “shall, within five weeks”, the words “shall, within four months and two weeks” shall be substituted;

(b) "High Court", in relation to a Special Court, means the High Court within the territorial limits of whose jurisdiction such Special Court is proposed to be, or is, established;

(c) "judicial zone" means a judicial zone constituted under sub-section (1) of section 3;

(d) "notification" means a notification published in the Official Gazette;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 9 and includes any person acting under the directions of the Public Prosecutor;

(f) "scheduled offence" means an offence specified in the Schedule being an offence committed in a terrorist affected area;

(g) "Special Court" means a Special Court or an Additional Special Court established under section 4;

(h) "terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to—

(i) putting the public or any section of the public in fear; or

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(iii) coercing or overawing the Government established by law; or

(iv) endangering the sovereignty and integrity of India;

(i) "terrorist affected area" means an area declared as a terrorist affected area under section 3;

(j) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Declara-
tion of
terrorist
affected
area.

3. (1) If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Act, it may, by notification,—

(a) declare such area to be a terrorist affected area; and

(b) constitute such area into a single judicial zone or into as many judicial zones as it may deem fit.

BILL NO. 67 OF 1984

A Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith.

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Terrorist Affected Areas (Special Courts) Act, 1984. Short title,
extent and
commence-
ment.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 14th day of July, 1984.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

2 of 1974.

(a) "Code" means the Code of Criminal Procedure, 1973;

STATEMENT OF OBJECTS AND REASONS

The extraordinary situation which has arisen in some parts of the country has necessitated the review of certain provisions of the National Security Act, 1980 (65 of 1980). Difficulties had been encountered in implementing the provisions of the Act, especially in areas where conditions are generally disturbed. The State Governments have also been asking for amendments to the Act to remove these difficulties. With a view to streamlining the working of the Act and making it more effective by enabling Government to deal stringently with anti-national, extremist and terrorist elements in the country, as also for enabling the concerned authorities to take preventive action which is required in the prevailing circumstances and larger interests of India, the President promulgated the National Security (Second Amendment) Ordinance, 1984, on the 21st June, 1984.

2. The Ordinance amended the National Security Act, 1980—

(a) to provide that the different grounds of detention shall be severable from each other so that the detention order is not vitiated simply because some of the grounds are considered vague, non-existent, not relevant, invalid or not connected or not proximately connected with the person detained. Such a provision already exists in the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974);

(b) to provide that the expiry or revocation of an earlier detention order shall not bar the making of a subsequent detention order against the same person subject to the condition that, where no fresh facts have arisen after the expiry or revocation of the earlier detention order, the maximum period for which a person may be detained in pursuance of the subsequent detention order shall not exceed the existing limit of the maximum period of detention of twelve months from the date of the earlier detention order. In the case of the application of the Act to the State of Punjab and the Union territory of Chandigarh, the said maximum period of detention will be two years.

3. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 25th July, 1984.

P. V. NARASIMHA RAO.

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.”.

3. In section 14 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amend-
ment of
section 14.

“(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984] bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.”.

4. In the principal Act as applicable to the State of Punjab and the Union territory of Chandigarh, in section 14A, in sub-section (2),—

Amend-
ment of
section
14A.

(i) in the opening portion, for the words and figures “sections 10 to 13”, the words and figures “sections 10 to 14” shall be substituted;

(ii) after clause (d), the following clause shall be inserted, namely:—

“(e) in section 14, in the proviso to sub-section (2), for the words “twelve months”, the words “two years” shall be substituted.”.

6 of 1984.

5. (1) The National Security (Second Amendment) Ordinance, 1984, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Repeal
and
saving.

BILL NO. 65 OF 1984

A Bill further to amend the National Security Act, 1980.

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

Short
title and
commence-
ment.

1. (1) This Act may be called the National Security (Second Amendment) Act, 1984.

(2) It shall be deemed to have come into force on the 21st day of June, 1984.

Insertion
of new
section 5A.

2. In the National Security Act, 1980 (hereinafter referred to as the principal Act), after section 5, the following section shall be inserted, namely:—

Grounds
of deten-
tion
severable.

“5A. Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

MEMORANDUM REGARDING DELEGATED LEGISLATION

Explanation 1 to sub-section (1) of new section 9 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, proposed by clause 2 of the Bill seeks to specify certain Indian customs waters, inland areas and the customs airport of Delhi as areas highly vulnerable to smuggling. With a view to covering areas which may become highly vulnerable to smuggling in future, this *Explanation* also seeks to empower the Central Government to specify, by notification in the Official Gazette, such further or other Indian customs waters, or inland areas, not exceeding one hundred kilometres in width from any other coast or border of India or such other customs station, as that Government may, having regard to the vulnerability of that area to smuggling, determine to be an area highly vulnerable to smuggling. As it is not possible to visualise now itself the areas which may become highly vulnerable to smuggling in future and as the guidelines subject to which the power to notify area under this *Explanation* may be exercised have been spelt out in the *Explanation* itself, the delegation of power is of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1984.

In addition to replacing the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1984, the Bill seeks to provide that the new section 9 will apply only to orders of detention made under the Act at any time before the 31st July, 1987.

STATEMENT OF OBJECTS AND REASONS

The provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, have had a deterrent effect and had been useful in combating smuggling activities. However, in view of the recent trends in smuggling activities, as indicated by the intelligence received, seizures made, etc., specially in the highly vulnerable areas of the west coast, south-eastern coast, India-Pakistan border and Delhi airport, it became urgently necessary to secure the availability of the special provisions of section 9 of the Act relating to smuggling operations in areas highly vulnerable to smuggling. Section 9 of the Act was available only in respect of detention orders made at any time before the 31st day of December, 1977. It was also felt necessary to re-define "areas highly vulnerable to smuggling" so as to cover the aforesaid areas. Hence, the President promulgated on the 13th July, 1984, the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1984.

2. The Bill seeks to replace the above-mentioned Ordinance and to provide that the amended provisions of section 9 will be applicable only to orders of detention made at any time before the 31st July, 1987.

NEW DELHI;

The 25th July, 1984.

PRANAB MUKHERJEE.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to substitute the existing section 9 by a new section. The enforcement of the provisions of the new section will require deployment of additional manpower involving a recurring expenditure of the order of about Rs 7.63 lakhs per annum and a non-recurring expenditure of about Rs 1 lakh.

The provisions of the Bill would not require any other recurring or non-recurring expenditure.

(ii) in clause (c),—

(1) for the words “the detention of the person concerned”, the words “the continued detention of the person concerned” shall be substituted;

(2) for the words “eleven weeks”, the words five months and three weeks” shall be substituted;

(iii) in clause (f), for the words “for the detention”, at both the places where they occur, the words “for the continued detention” shall be substituted.’.

8 of 1984.

3. (1) The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1984, is hereby repealed.

Repeal
and
saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

(2) A notification issued under sub-section (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Act, be a terrorist affected area, and where the Central Government is of the opinion that terrorists had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date:

Provided that—

(a) no period commencing from a date earlier than six months from the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed six months, but the Central Government may, by notification, extend such period from time to time by any period not exceeding six months at any one time, if the Central Government, having regard to the activities of terrorists in such area, is of the opinion that it is expedient so to do

Explanation.—For the avoidance of doubts, it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of commencement of this Act.

4. (1) For the purpose of providing for speedy trial of scheduled offences committed in a judicial zone, the Central Government may establish, by notification, a Special Court in relation to such judicial zone—

Estab-
lishment
of Spe-
cial
Courts.

(a) Within such judicial zone; or

(b) if the Central Government having regard to the exigencies of the situation prevailing in such judicial zone considers it expedient so to do, at any place outside such judicial zone but within the State in which such judicial zone is situated.

(2) Notwithstanding anything contained in sub-section (1) if, having regard to the exigencies of the situation prevailing in a State the State Government is of the opinion that it is expedient to establish in relation to a judicial zone, or in relation to two or more judicial zones, in the State, an Additional Special Court outside the State, for the trial of such scheduled offences committed in the judicial zone or judicial zones, the trial whereof within the State—

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice,

the State Government may request the Central Government to establish in relation to such judicial zone or judicial zones an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit establish by notification such Additional Special Court at such place outside the State as may be specified in the notification

Composition and appointment of Judges of Special Courts.

5. (1) A Special Court shall be presided over by a Judge to be appointed by the Central Government with the concurrence of the Chief Justice of the High Court.

(2) The Central Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

(3) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he is immediately before such appointment a Session Judge or an Additional Sessions Judge in any State.

(4) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge of a Special Court, of age of superannuation under the rules applicable to him in the Service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(5) Where any Additional Judge or Additional Judges is, or are appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

Place of sitting.

6. A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is established:

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

Jurisdiction of Special Court.

7. (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a terrorist affected area shall be triable, whether during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under sub-section (2) of section 3 as the period during which an area declared by notification under sub-section (1) of that section to be a terrorist affected area commences from a date earlier than the date on which such notification is issued, then—

(a) nothing in the foregoing provisions of this sub-section shall apply to a scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(b) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the Central Government, having regard to the provisions of sub-section (2) of section 4 and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the Central Government may make a declaration to that effect:

Provided that no such declaration shall be made unless the State Government has forwarded to the Central Government a report in writing containing a request for making of such declaration.

Explanation.—Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted **only in the Additional Special Court** established in relation to such judicial zone outside the State, and if any prosecution in respect of such offence is pending immediately before such declaration in any other court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

8. (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

Power
Special
Courts
with re-
spect to
other
offences.

(2) If, in the course of any trial under this Act, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

9. (1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors;

Public
Prosecu-
tors.

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Proce-
dure and
Powers of
Special
Courts.

10. (1) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(5) Subject to the other provisions of this Act, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

Power of
Supreme
Court
to trans-
fer case.

11. Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

Protec-
tion of
witness-
es.

12. (1) Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a protected place;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

13. Where after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

Power to transfer cases to regular courts.

14. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

Appeal.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

15. (1) Notwithstanding anything contained in the Code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

Modified application of certain provisions of the Code.

(2) Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that—

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate";

(b) the references in sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur shall be construed as references to "thirty days", "one year" and "one year", respectively; and

(c) sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Special Court" and "Supreme Court", respectively.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a scheduled offence in a terrorist affected area.

(5) Notwithstanding anything contained in the Code, no person accused of a scheduled offence shall, if in custody, be released on bail or on his own bond unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(6) The limitations on granting of bail specified in sub-section (5) are, in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Overriding effect of Act.

16. (1) The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court; and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session.

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the provisions of sections 326 and 475 of the Code shall, as far as may be, apply to the proceedings before a Special Court, and for this purpose any reference in those provisions to a Magistrate shall be construed as a reference to the Special Court.

Delegation.

17. The Central Government may, by notification, delegate, subject to such conditions as may be specified, all or any of the powers exercisable by it under this Act [except the power under sub-section (2) of section 4 and the power under sub-section (2) of section 7] to the State Government.

Power to make rules.

18. The Supreme Court may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

Saving.

19. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or any other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a Court of ordinary criminal justice.

Amendment of Act 1 of 1872.

20. In the Indian Evidence Act, 1872, after section 111, the following section shall be inserted, namely:—

Presumption as to certain offences.

“111A. (1) Where a person is accused of having committed any offence specified in sub-section (2), in—

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:—

45 of 1860. (a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal Code;

45 of 1880. (b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code.”.

9 of 1984. 21. (1) The Terrorist Affected Areas (Special Courts) Ordinance, 1984, is hereby repealed. Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See section 2 (f)]

PART I—INDIAN PENAL CODE

- 45 of 1860. 1. Offences under the following provisions of the Indian Penal Code, 1860:—
- (a) sections 121, 121A, 122, 123, 124 and 124A;
 - (b) sections 128, 129 and 130;
 - (c) sections 131, 132, 133, 134, 135, 136, 138 and 140;
 - sections 153A and 153B;
 - sections 189 and 190;
 - sections 212, 216, 216A, 224, 225 and 225B;
 - sections 295 and 295A;
 - sections 302, 304 and 307;
 - (d) sections 308 and 326;
 - (e) sections 332, 333, 342, 343, 344, 346, 347, 353, 363, 364, 365 and 367;
 - sections 392, 393, 394, 395, 396, 397, 398, 399 and 436;
 - sections 505, 506 and 507.

PART II—THE EXPLOSIVES ACT, 1884

- 4 of 1884. 2. Offences under the following provisions of the Explosives Act, 1884:—
- section 9B.

PART III—THE INDIAN TELEGRAPH ACT, 1885

- 13 of 1885. 3. Offences under the following provisions of the Indian Telegraph Act, 1885:—
- sections 20 and 25.

PART IV—THE INDIAN RAILWAYS ACT, 1890

4. Offences under the following provisions of the Indian Railways Act, 1890:— 9 of 1890.

sections 126, 126A, 127 and 128.

PART V—THE EXPLOSIVE SUBSTANCES ACT, 1908

5. Offences under the following provisions of the Explosive Substances Act, 1908:— 6 of 1908.

sections 3, 4, 5 and 6.

PART VI—THE ARMS ACT, 1959

6. Offences under the following provisions of the Arms Act, 1959:— 54 of 1959.

sections 25(1) excluding clause (b), 25(1A), 25(1B) excluding clauses (d), (e), (i), 26, 27, 28 and 29.

PART VII—THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

7. Offences under the following provisions of the Unlawful Activities (Prevention) Act, 1967:— 37 of 1967.

sections 10, 11, 12 and 13.

PART VIII—THE ANTI-HIJACKING ACT, 1982

8. Offences under the following provisions of the Anti-Hijacking Act, 1982:— 65 of 1982.

sections 4 and 5.

PART IX—THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF CIVIL AVIATION ACT, 1982

9. Offences under the following provisions of the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982:— 66 of 1982.

sections 3 and 4.

PART X—THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984

10. Offences under the following provisions of the Prevention of Damage to Public Property Act, 1984:— 3 of 1984.

sections 3 and 4.

NOTE 1.—An offence specified in item 1(b) of Part I of this Schedule (that is to say, an offence under section 128, 129 or 130 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed in relation to a prisoner accused, charged or convicted of a scheduled offence. 45 of 1860.

NOTE 2.—An offence specified in item 1(d) of Part I of this Schedule (that is to say, an offence under section 308 or section 326 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed with a firearm. 45 of 1860.

NOTE 3.—The offence of criminal conspiracy or attempt to commit, or abetment of, an offence specified in this Schedule shall be deemed to be a scheduled offence.

NOTE 4.—The commission of an offence specified in this Schedule by any member of an unlawful assembly shall be deemed to be the commission of that scheduled offence by every other member of the unlawful assembly.

STATEMENT OF OBJECTS AND REASONS

The law and order situation in certain parts of the country has been disturbed because of the criminal activities of terrorists. They have been indulging in wanton killing of innocent persons, looting of properties, disrupting lines of communication and committing other heinous crimes on a scale and in a manner which have made the life of the people in the affected area extremely difficult and have threatened the security and the territorial integrity of the country. In this situation proper and fair conduct of criminal trials had become very difficult. The need was, therefore, felt, in the public interest, to establish Special Courts for fair and speedy trial of offences. Concern was also expressed in the Parliament in this regard. Since Parliament was not in session and circumstances existed which rendered it necessary for him to take immediate action, the President on the 14th day of July, 1984 promulgated the Terrorist Affected Areas (Special Courts) Ordinance, 1984 (9 of 1984).

2. The Ordinance, *inter alia*, seeks to:—

(i) define "terrorist" as a person who, with a view to putting the public or any section thereof in fear or adversely affecting the harmony between different religious, racial, language or regional groups or castes or communities or coercing or overawing the Government or endangering the sovereignty and integrity of India, indulges in wanton killing of persons or in violence or in disruption of services or means of communications essential to the community or in damaging property;

(ii) empower the Central Government to declare an area to be a terrorist affected area and to constitute such area into a single judicial zone or into as many judicial zones as it may deem fit;

(iii) empower the Central Government to establish Special Courts in relation to the judicial zones inside or outside the State;

(iv) empower the Central Government to appoint Judges of Special Courts and Additional Special Courts with the concurrence of the Chief Justice of the High Court;

(v) prohibit grant of anticipatory bail in cases involving specified offences committed in terrorist affected areas and to make the grant of bail in respect of specified offences stringent;

(vi) enhance the maximum limit of period of remand in police custody from 15 days to 30 days;

(vii) provide for appeal against any judgment, sentence or order of a Special Court to the Supreme Court.

3. The Ordinance also amended the Indian Evidence Act, 1872 for including therein a new section 111A to provide for raising of a presumption as to the offence of waging war against the State and related offences.

The presumption under the section can be raised only in the case of a person accused of having committed any such offence in a disturbed area. Further, it must also be shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the member of any Armed Forces or the Forces charged with the maintenance of public order acting in the discharge of their duties.

4. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

P. V. NARASIMHA RAO.

The 25th July, 1984.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the establishment of Special Courts by the Central Government, in relation to the judicial zones constituted under sub-clause (1) of clause 3 of the Bill. Clause 5 of the Bill provides for the appointments of the Judges and Additional Judges of the Special Courts. Clause 9 of the Bill provides for the appointments of the Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors by the Central Government.

2. The expenditures towards setting up of the Special Courts and towards salaries and allowances of the Judges, the Public Prosecutors and staff will be defrayed out of the Consolidated Fund of India. The likely expenditure for each Special Court and on the salaries and allowances of the Judges, Public Prosecutors/Additional Public Prosecutors, staff, etc., over a period of six months is expected to be about rupees 3.57 lakhs, out of which rupees 1.72 lakhs will be of a recurring nature and rupees 1.85 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is not possible to give an estimate of the actual expenditure that may have to be incurred in this behalf.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill empowers the Central Government to delegate to the State Government, by notification, all or any of the powers exercisable by it except the powers under sub-clause (2) of clause 4 and the power under sub-clause (2) of clause 7 of the Bill.

2. Clause 18 of the Bill empowers the Supreme Court to frame rules, as it deems necessary, for carrying out the purposes of the Act.

3. The delegation of legislative power is of a normal character.

SUBHASH C. KASHYAP,
Secretary-General.

